

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:

ADDS 312 IAC 26.6 TO ESTABLISH AND ADMINISTER DISTRIBUTION OF GRANTS FROM THE INDIANA SPORTSMEN’S BENEVOLENCE ACCOUNT (IC 14-9-5-4(b))))))	Administrative Cause Number: 13-112L LSA Document #13-446(F)
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**REPORT ON RULE PROCESSING, WRITTEN COMMENTS, COMMENTS AT
PUBLIC HEARINGS, AND HEARING OFFICER ANALYSES WITH
RECOMMENDATIONS REGARDING FINAL ADOPTION**

1. RULE PROCESSING

For consideration is the proposed new rule 312 IAC 26.6, which would administer the distribution of grants from the Indiana Sportsmen’s Benevolence Account (the “Account”) established by IC 14-9-5-4(b). The Account was established in 2010 and codified at IC 14-9-5-4, as a fund within the Division of Law Enforcement, to encourage citizen participation in feeding the state's hungry through donations of wild game that has been lawfully hunted. Effective July 1, 2013, SEA 364 (P.L. 124-2013) amended IC 14-9-5-4 to provide a system of grants and other support for the Account. Additionally, this proposed rule would provide the process for application of grants and subsequent disbursement of those grant funds to reimburse the processing costs incurred by a qualified organization to produce the food products. The food products would then be distributed through Indiana’s food banks.

The Natural Resources Commission (“Commission”) gave preliminary adoption to the proposed amendments on September 17, 2013. As reported in the pertinent portions of the September 17 minutes:

Consideration of preliminary adoption of 312 IAC 26-6 to assist with implementation of the Sportsmen's Benevolence Account; Administrative Cause No. 13-112L

Lieutenant Steve Hunter of the Law Enforcement Division presented this item. He said the Division of Law Enforcement proposed preliminary adoption to assist with implementation of the Sportsmen's Benevolence Fund. He said there is \$150,000 in the General Fund to be used for the purpose of processing deer, taken by lawful hunters, by a processing facility for food donations. "The rules we've recommended here we think are necessary and minimal."

The Chair commented, "It's a great program."

Jane Ann Stautz moved to approve the preliminary adoption of 312 IAC 26-6 to assist with implementation of the Sportsmen's Benevolence Account. Phil French seconded the motion. Upon a voice vote, the motion carried.

Executive Order 13-03 required agencies to "suspend rulemaking action on any proposed rules for which a notice of intent to adopt a rule...was not submitted to the office of the Indiana *Register* on or before January 14, 2013." Additional compliance provisions were included in Financial Management Circular 2013-01. Cameron Clark, Director of the Indiana Department of Natural Resources ("DNR"), submitted to the Office of Management and Budget ("OMB") a "Request for exemption to the suspension of rulemaking action under the provisions of Executive Order 13-03" for this rule proposal. On August 23, 2014, Christopher D. Atkins, Director, Office of Management and Budget, wrote that DNR's "request to promulgate rules to administer the Sportsmen's Benevolence Fund falls within an exception of Governor Pence's Executive Order 13-03. ... DNR's request qualifies for a waiver under Section 355 of House Enrolled Act 1001. Therefore, DNR may proceed with the rule".

The "Notice of Intent" to adopt the new rule was published in the Indiana *Register* at 20130925-IR-312130446NIA on September 25, 2014. The notice identified Captain David Dungan, with the Division of Law Enforcement, as the "small business regulatory coordinator" for purposes of IC 4-22-2-28.1.

The Commission caused the information required by IC 4-22-2-22.5 to be included in the rulemaking docket maintained on its website at <http://www.in.gov/nrc/2377.htm>. The rulemaking docket was also updated periodically as the rule adoption progressed.

As specified by the Executive Order that then applied, proposed fiscal analyses of the rule proposal, and the rule standards analysis under IC 4-22-2-19.5 were submitted, along with a copy

of the proposed rule language and a copy of the posted Notice of Intent, to OMB and the Administrative Rules Oversight Committee (“AROC”) on September 25, 2013. On October 17, 2013, as required by IC 14-22-2-28(i) and clarified in a Memorandum from Matt Light, Chief Counsel, Advisory Division of the Office of the Attorney General, dated October 8, 2013, the justification statement under IC 4-22-2-24(d)(3) was forwarded to the AROC. On April 7, 2014, the DNR forwarded to the Commission a letter from Brian E. Bailey, Director, State Budget Agency, stating, in part, “After reviewing the proposed rule, the recommendation of the State Budget Agency is that the rule changes be approved.”

On April 7, 2014, the Division of Hearings submitted the rule proposal to the Legislative Services Agency (“LSA”), along with the “Statement Concerning Rules Affecting Small Business” (also known as the “Economic Impact Statement”). The Notice of Public Hearing and the Justification Statement (IC 4-22-2-24(d)(3)) were submitted to LSA on the same day. On April 16, 2014, the following were posted to the *Indiana Register*: the text of the proposed rule (20140416-IR-312130446PRA); the notice of public hearing (20140416-IR-312130446PHA); and the Economic Impact Statement (20140416-IR-312130446EIA). Following receipt from LSA of an “Authorization to Proceed”, the Division of Hearings caused Notice of Public Hearing to be published on April 11, 2014 in the *Indianapolis Daily Star*, a newspaper of general circulation in Marion County.

The Statement Concerning Rules Affecting Small Businesses (the “EIS”), as required under IC 4-22-2.1-5, and submitted by the Small Business Regulatory Coordinator, indicates:

Economic Impact Statement
LSA Document #13-446

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Estimated Number of Small Businesses Subject to this Rule:

It is estimated that between 92 and 113 small businesses will be indirectly affected by implementation of this proposed rule. This number is based on the number of Indiana wildlife food product processors that will receive reimbursement from the not-for-profit entities that will be eligible for funding under [IC 14-9-5-4](#).

Estimated Average Annual Reporting, Record Keeping, and Other Administrative Costs Small Businesses Will Incur for Compliance:

The affected Indiana wildlife food product processors will incur only small direct costs for complying with the proposed rules. These costs will be realized through purchase of a specialty stamp for processed wildlife food products, photocopying costs, postal service costs and

administrative business records paperwork. The total estimated annual costs incurred by the Indiana wildlife food product processors should not exceed \$50.

Estimated Total Annual Economic Impact on Small Businesses to Comply:

The total estimated economic impact on each Indiana wildlife food product processors should be positive in the overall annual estimation. Each processor will be supplied with a predetermined amount of monetary reimbursement for each deer processed under this proposed rule (traditionally \$50 to \$60 per deer). The total reimbursement per processor will vary depending on the number of deer donated to that processor and agreed to with the supporting not-for-profit under this program.

Justification Statement of Requirement or Cost:

The only requirement imposed upon a processor beyond requirements met under other Indiana statutes pertaining to wildlife processing for consumption by Indiana citizens is the requirement to provide an inking stamp for the packaging of processed food products produced under this rule denoting "Indiana Sportsmen's Benevolence Fund – Not for Sale".

Regulatory Flexibility Analysis of Alternative Methods:

There exist no alternative methods for the implementation of this rule. The proposed rule attempts to meet the requirements of [IC 14-9-5-4](#) with the minimum amount of oversight and regulation, in an attempt to provide as much service to the needy citizens of Indiana in the most cost effective manner.

On April 7, 2014, the Economic Impact Statement was forwarded to the IEDC, through the Office of the Lieutenant Governor's Indiana Office of Small Business and Entrepreneurship (the "OSBE"), formerly known as the "Indiana Economic Development Corporation". On April 21, 2014, Jacob Schpok, Executive Director, OSBE, wrote to the Commission: "The economic impact statement...indicates the total estimated economic impact on each Indiana wildlife food product processors should be positive in the overall annual estimation. Each processor will be supplied with a predetermined amount of monetary reimbursement for each deer processed under this proposed rule (traditionally \$50.00 to \$60.00 per deer). OSBE does not object to the economic impact to small business associated with the proposed rule." On the same day, the Commission responded by email to the OSBE: "Thank you for your timely and thorough comments under IC 4-22-2-28. Since you have commented favorably upon the agency's fiscal analysis, and have suggested no alternatives, it will be recommended that the...Commission move forward with consideration for final adoption." On the same day a copy of the OSBE correspondence was uploaded to the Commission's website at www.in.gov/nrc/2377.htm.

2. WRITTEN COMMENTS RECEIVED BY THE COMMISSION THROUGH ITS WEBSITE OR BY FIRST CLASS MAIL

The following comments were submitted through the Commission's online docket:

<p>Commenter Name Woody Williams City Newburgh County WARRICK State Indiana Organization (optional) Hunt-Indiana.com E-Mail Address asats@wowway.com Comments As a hunter that donates deer regularly to my church's food pantry I am all in favor of this proposal. Once a deer hunter fills their home freezer and they would like to keep on hunting they can attempt to find others that will take the deer and usually end up paying to have it processed. This will eliminate that problem. The deer is taken, it is processed at no charge and the needy get some very good protein. Being active in my church's food pantry I know that protein is hard to come by. Very little of it comes in a can or package.</p> <p>I see this as a win-win all the way around.</p> <p>Thanks,</p> <p>WW.</p> <p>Comment Received 11/12/2013 11:28:08 AM</p>
<p>Commenter Name jack corpuz City indianapolis County MARION State in E-Mail Address jc9195757@yahoo.com Comments Definitely support the needed changes to administer the Sportsmens Benevolence Fund to help process donated deer.</p> <p>Comment Received 11/29/2013 8:43:37 PM</p>

3. PUBLIC HEARING

The May 8, 2014 public hearing was convened as published. At the beginning of the public hearing, the Hearing Officer announced the comment period would close at Noon, May 8, 2014. The close of the public comment period was also posted on the Commission's online rule docket at <http://www.in.gov/nrc/2377.htm>. Capt. Dungan and Lt. Col. Steve Hunter from the DNR, Division of Law Enforcement attended the public hearing. No other member of the public was in attendance.

5. HEARING OFFICERS ANALYSES WITH RECOMMENDATIONS REGARDING FINAL ADOPTION

The Sportsmen's Benevolence Account was established in 2010 and codified at IC 14-9-5-4. (P.L. 66-2008, *Sec. 3*); and subsequently, amended by P.L. 46-2010, SECTION. 1. In 2013, the

statute was again amended by P.L. 124-2013, SECTION 1 (SEA 364) effective July 1, 2013. Among other amendments, IC 14-9-5-4(i) was added to read: “The department shall adopt rules under IC 4-22-2 to implement this chapter”. On June 18, 2013, an administrative file was opened to track the rule promulgation, which is within 60 days of the statutory amendment’s effective date, satisfying IC 4-22-2-19(c).

312 IAC 26-6 would provide the structure for the Division of Law Enforcement to administer and monitor this program. The rule proposal provides: (1) the deadlines for applying for a grant; (2) the types of expenses incurred for which grant money may be used; and (3) any documentation of expense required to satisfy program accounting needs. A temporary rule governing the same subject matter was approved by the DNR Director and filed with the Legislative Services Agency (the “Publisher”) as LSA Document #13-441(E). The temporary rule became effective October 1, 2013, and was published in the *Indiana Register* at 20130925-IR-312130441ERA. This instant rule proposal would make the process set forth in the temporary rule permanent. The DNR’s Division of Law Enforcement has also developed a website dedicated to providing additional information on the “Sportsmen’s Benevolence Account” at <http://www.in.gov/dnr/lawenfor/3987.htm>.

At the public hearing, Capt. Dungan provided the following data summarizing the activity under the Sportsmen’s Benevolence Account:

SPORTSMEN’S BENEVOLENCE FUND TOTALS: 2013–2014

	Hoosiers Feeding the Hungry	Mother Hubbard’s Cupboard	Dubois County Sportsmen	TOTALS
Total Grant Award	\$60,771.00	\$25,000.00	\$7,500.00	\$93,271.00
Total Number Deer	890	419	102	1411
Total Lbs. Processed	43,971	18,793	4,709	67,473
Total Meals Supplied	175,884	75,172	18,836	269,892

The above qualified organizations received grants through the Sportsmen’s Benevolence Account to reimburse the costs incurred by the Indiana wildlife food product processors. Processing costs vary depending on the county where the processor is located. Typically, the processing cost per deer is \$50 to \$60. The qualified organizations are also responsible for

picking up the processed venison and distributing the product to Indiana's food banks. All 92 Indiana counties received some portion of the venison processed under this program. 312 IAC 26-6-2(c)(2) allows funds to be used to reimburse the Division of Law Enforcement for expenditures incurred while administering, promoting, or supporting the fund. For 2013-2014, the Division of Law Enforcement was reimbursed approximately \$2,000.

The proposed new rule, 312 IAC 26-2, appears to be appropriate as presented in "Exhibit A" for consideration as to final adoption.

Dated: May 9, 2014

Jennifer M. Kane
Hearing Officer

EXHIBIT A

TITLE 312 NATURAL RESOURCES COMMISSION

Final Rule

LSA Document #13-446(F)

DIGEST

Adds 312 IAC 26-6 to establish and administer the distribution of grants from the Indiana Sportsmen's Benevolence Account established by IC 14-9-5-4(b). Effective 30 days after filing with the Publisher.

312 IAC 26-6

SECTION 1. 312 IAC 26-6 IS ADDED TO READ AS FOLLOWS:

Rule 6. Sportsmen's Benevolence Fund

312 IAC 26-6-1 Definitions

Authority: IC 14-9-5-4; IC 14-10-2-4

Affected: IC 14-8; IC 14-9; IC 14-22-12-1

Sec. 1. The definitions in IC 14-8, 312 IAC 1, and the following apply throughout this rule:

(1) "Division" means the division of law enforcement established by IC 14-9-4-1.

(2) "Division director" means the director of the division appointed under IC 14-9-8-6.

(3) "Fund" means the Indiana sportsmen's benevolence account established by IC 14-9-5-4(b).

(4) "Grantee" refers to a qualified organization that receives a grant under this rule.

(5) "Qualified organization" means a corporation, with exemption status under 26 U.S.C. 501(c)(3), that:

(A) is incorporated in Indiana; and

(B) has as a purpose the processing of wild animal food products for the state's hungry.

(6) "White-tailed deer" means the species *Odocoileus virginianus*.

(Natural Resources Commission; 312 IAC 26-6-1)

312 IAC 26-6-2 Administration of sportsmen's benevolence fund

Authority: IC 14-9-5-4; IC 14-10-2-4

Affected: IC 14-22-12-1

Sec. 2. (a) This rule governs a grant made through the fund.

(b) This rule and the fund are administered by the division.

(c) The fund shall be used to provide the following:

- (1) Reimbursement to a qualified organization for work performed by a participating meat processor.**
- (2) Reimbursement to the division for expenditures incurred while administering, promoting, or supporting the fund.**
- (3) Program community outreach and education through public information avenues.**

(d) An activity governed by LSA Document #13-441(E) is exempted from this rule.
(Natural Resources Commission; 312 IAC 26-6-2)

312 IAC 26-6-3 Eligibility requirements

Authority: IC 14-9-5-4; IC 14-10-2-4

Affected: IC 14-22-12-1; IC 15-17-5-1

Sec. 3. (a) To qualify for a grant under this rule, a qualified organization must do the following:

- (1) Submit an application to the division on a departmental form. Except as provided in section 4(d) of this rule, only complete requests received timely by the division on an approved application form shall be considered for funding.**
- (2) Show compliance with the definition of a qualified organization.**
- (3) Provide a project description for use of the grant, including the amount of the proposed project.**
- (4) Document estimated costs for each stage of the project.**
- (5) Provide a written proposal for any work to be performed by a participating meat processor.**

(b) Upon reasonable request by the division, a grantee and a participating meat processor must provide access to and copies of all records that show the acquisition of a wild animal and disbursement of the meat and funds.

(c) Only ground venison from white-tailed deer taken in Indiana qualifies as a reimbursable consumable product. Ground venison must be provided to the state's hungry in either one (1) or two (2) pound packages that are marked clearly on the outside:

Donated Sportsmen's Benevolence Fund Venison – Not for Resale

A member of the state's hungry must not receive more than ten (10) pounds of ground venison each week.

(d) A grantee must use a meat processor with a facility that:

- (1) is subject to inspection by the Indiana state board of animal health under IC 15-17-5-1 to produce food for human consumption; and**
- (2) complies with the requirements of the weights and measures program of the Indiana state department of health.**

(e) A grantee must keep true and accurate records of the number of donors, pounds of donated venison, and charitable recipient group. The records must be:

- (1) submitted to the division by May 1 following the taking of the white-tailed deer; and
- (2) made available to a conservation officer at all reasonable hours, and copies must be provided to a conservation officer upon request.

(f) If a grantee or the grantee's participating meat processor violates IC 14-9-5-4 or this rule, the department may:

- (1) terminate the grant; and
- (2) demand that funds allocated under this rule be returned immediately to the division.

(Natural Resources Commission; 312 IAC 26-6-3)

312 IAC 26-6-4 Grant reconciliations based upon available funding

Authority: IC 14-9-5-4; IC 14-10-2-4

Affected: IC 14-22-12-1

Sec. 4. (a) The division shall not make grant awards that exceed funding anticipated by IC 14-9-5-4 and this rule.

(b) Except as provided in subsection (d), the division shall not award a grant other than as provided in sections 2(c) and 3(a) of this rule.

(c) To achieve compliance with subsection (a), the division shall consider the following:

- (1) The number of meals that a qualified organization proposes to deliver to the state's hungry.
- (2) The history of success by a qualified organization in delivery of meals to the state's hungry, including compliance with IC 14-9-5-4 and this rule.
- (3) The economic efficiency of a qualified organization in achieving delivery of meals to the state's hungry.
- (4) Geographic balance within Indiana in providing meals to the state's hungry.
- (5) Any other factor that reasonably serves the purposes of IC 14-9-5-4 and this rule.

(d) If available funding exceeds awards to grantees that comply with section 3(a) of this rule, the division may make supplemental awards that are not otherwise inconsistent with IC 14-9-5-4 and this rule. Requests for supplemental awards shall be considered in the order the division receives the requests. *(Natural Resources Commission; 312 IAC 26-6-4)*

312 IAC 26-6-5 Schedule for grant applications, actions on applications, and actions concerning approved grants

Authority: IC 14-9-5-4; IC 14-10-2-4

Affected: IC 14-22-12-1

Sec. 5. The following schedule governs applications, actions on applications, and actions concerning approved grants:

- (1) An application for annual hunting season participation must be made by a person that is a qualified organization and filed with the division by June 1 prior to the hunting season.**
- (2) By July 1, the division shall announce whether an application is approved, approved with conditions, or denied.**
- (3) By August 1, a grantee must make a budget submission to the division.**
- (4) By October 31, the division shall distribute seventy-five percent (75%) of the grant amount to the grantee.**
- (5) By December 31, the grantee must submit invoices to the division with respect to the anticipated asset and liability status for grant cycle.**
- (6) By January 30, the grantee must request the remaining grant percentage (not to exceed twenty-five percent (25%)) or make repayment to the division for any distribution overage.**
- (7) By April 1 following the taking of a white-tailed deer, a grantee must make final distribution of venison.**
- (8) By May 1, a grantee shall make its final annual report to the division.**
- (9) By May 15, the division director shall provide a final report of:**
 - (A) fund expenditures;**
 - (B) families affected;**
 - (C) historical perspectives; and**
 - (D) goals accomplished;****during the preceding fiscal year.**

(Natural Resources Commission; 312 IAC 26-6-5)

Notice of Public Hearing